

FILED

UNITED STATES COURT OF APPEALS

NOV 02 2012

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CLARENCE AGCAOILI HERNANDEZ,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 09-73088

BIA No. A038-108-925

ORDER

Before: REINHARDT, THOMAS, and PAEZ, Circuit Judges.

The court holds that there are genuine factual disputes regarding the marital status of Hernandez's parents at the time of his birth precluding a determination by this court of his claim of derivative citizenship. Pursuant to 8 U.S.C.

§ 1252(b)(5)(B), this petition for review is transferred to the United States District Court for the District of Hawaii, the district in which Petitioner resides, for the limited purpose of making a *de novo* determination of petitioner's claim of United States citizenship. *See Chau v. INS*, 247 F.3d 1026, 1032 (9th Cir. 2001).

Submission of this case is vacated and the petition for review is held in abeyance pending judicial determination of petitioner's citizenship claim. The Clerk shall serve a copy of this order upon the district court. The parties shall,

within 30 days of the filing date of this order, advise this court of the district court's docket number in the transferred petition.

Within 14 days of the district court's entry of judgment, the parties shall file with this court a copy of the district court's judgment, findings of fact, and conclusions of law.

Within 60 days of the district court's entry of judgment, Petitioner shall either notify this court that he wishes to rely upon the opening brief filed on March 15, 2010 (Docket No. 7), or file a motion to strike that brief, accompanied by a new opening brief. *See Demirchyan v. Holder*, 641 F.3d 1141, 1143 (9th Cir. 2011) (“[W]e see no meaningful distinction between transfer under 8 U.S.C. § 1252(b)(5)(B) and limited remand.”).